

STATE OF ALASKA**THE REGULATORY COMMISSION OF ALASKA**

Before Commissioners:

Robert A. Doyle, Chairman
 John M. Espindola
 Keith Kurber II
 Robert M. Pickett
 Janis W. Wilson

In the Matter of the Tariff Revisions Designated)
 as TA544-8 Filed by CHUGACH ELECTRIC)
 ASSOCIATION, INC.) U-23-047
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 _____)

In the Matter of the Tariff Revisions Designated)
 as TA422-121 Filed by CHUGACH ELECTRIC)
 ASSOCIATION, INC.) U-23-048
 _____)
 _____)

**OPPOSITION TO RENEWABLE ENERGY ALASKA PROJECT'S MOTION
 TO COMPEL AND FOR SCHEDULING MODIFICATION**

I. Introduction.

In its petition to intervene, Renewable Energy Alaska Project ("REAP") pledged that "its participation in this proceeding will not unduly broaden the issues beyond those that Chugach has raised in its filing" and assured the Regulatory Commission of Alaska ("Commission") that it would "not delay the proceeding."¹ And yet, REAP now seeks to

¹ *Renewable Energy Alaska Project's Petition to Intervene*, September 18, 2023 at 9.

compel Chugach Electric Association, Inc. (“Chugach”) to provide each of its customers’ street address and zip code, as well as individualized information on their usage of electricity. This information was not referenced by Chugach in TA544-8 or TA422-121. Concurrently, REAP asks for an extension of its deadline to file testimony but fails to explain how this extension can be accomplished without delaying the remaining procedural schedule. ENSTAR Natural Gas Company, LLC (“ENSTAR”) opposes REAP’s motion to compel because (1) REAP is attempting to obtain personal customer information that is outside the allowable scope of discovery and will unduly broaden the issues and delay the proceeding, and (2) the Commission should protect the disclosure of granular information about non-party customers without their consent or waiver.

II. Legal Standard.

Discovery sought in Commission proceedings must be “relevant to the subject matter of the proceeding, if the matter is admissible in evidence under 3 AAC 48.154 or appears reasonably calculated to lead to the discovery of admissible evidence.”² “[D]iscovery from a party in a rate case usually covers only information directly related to that party’s case....”³

² 3 AAC 48.141; Order U-15-081(6), *Order Denying Motion to Compel*, October 30, 2015. 3 AAC 48.154(a) states “[a]ll relevant evidence, which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, with due regard to its necessity, availability, and trustworthiness, is admissible.”

³ Order P-97-004(115), *Order Sustaining Certain Objections and Overruling Certain Objections to Discovery Requested by the TAPS Carriers from Tesoro Alaska Petroleum Company; and Denying Motion to Clarify Scope of Discovery*, February 9, 2001 at 4.

III. Argument.

A. Granular Non-Party Information is Outside the Scope of Discovery.

The type of information that REAP seeks to obtain through discovery in a rate case in REAP-CEA-2-1 is unheard of in ENSTAR's experience in front of the Commission. The granular information that REAP desires includes the address for each of Chugach's customers and individualized information about their use of electricity. REAP claims that this type of information is commonly used in rate design and available to intervenors.⁴ But there is no Commission support for its claim.⁵ To the contrary, Commission precedent holds that discovery in a rate case "usually covers only information directly related to that party's case...."⁶ REAP admits that it seeks the data to perform *its own* alternative rate design and not to review the rate design presented by Chugach in its case. The Commission should deny REAP's motion to compel as it seeks information outside the allowable scope of discovery.

Further, the cases from outside jurisdictions cited by REAP do not support its arguments. For example, the lead case cited by REAP⁷ for the proposition that it seeks data commonly used in rate design is an order by the Michigan Public Service

⁴ *REAP's Motion to Compel and for Scheduling Modification*, January 29, 2024 at 10-11.

⁵ *Id.* at 11 ("[A]vailable to intervenors in rate cases *in other jurisdictions.*") (emphasis added).

⁶ Order P-97-004(115) at 4.

⁷ *REAP's Motion to Compel* at 10 fn 46.

Commission accepting a settlement agreement.⁸ The Michigan commission expressly conditioned the order, stating that it should not be relied on. “[N]either the Parties to this settlement nor the Commission shall make any reference to, or use this Settlement Agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding[.]”⁹ This Commission should disregard and give no more weight to the decision than the Michigan commission would. Additionally, the prefiled testimony from other jurisdictions cited by REAP demonstrates that customer address information is not provided in discovery.¹⁰

If the Commission allows REAP to pursue its course, it will unduly broaden the issues and delay these proceedings. As noted above, REAP admits that it is attempting to obtain the information to develop its own rate design. This will broaden the issues “beyond those that Chugach has raised in its filing”¹¹ contrary to REAP’s representations in its petition to intervene.

REAP requests an extension of time to file its testimony in addition to its motion to compel. REAP does not explain how this will impact the procedural schedule, but in ENSTAR’s experience an extension of the deadline to file intervenor testimony usually

⁸ *Id.*, Ex. 7 at 1.

⁹ *Id.*, Ex. 7 at 14.

¹⁰ *Id.*, Ex. 10 at 2, Ex. 11 at 3.

¹¹ *REAP’s Petition to Intervene* at 9.

requires an extension of all subsequent deadlines up to and including the statutory deadline for a Commission decision. Consistent with ENSTAR's experience, the Office of the Attorney General, Regulatory Affairs and Public Advocacy Section has already filed a request for the Commission to extend the deadline for all parties' responsive testimony if the Commission grants REAP's motion.¹² Granting REAP's request will delay these proceedings, which REAP pledged it would not do.¹³

The Commission should hold REAP to its commitments and not allow it to expand the scope and time of these Dockets. The Commission's discovery regulations were adopted to avoid such a result. As the Commission explained, "litigants are concerned about the amount of time and resources consumed during the discovery phase of dockets."¹⁴ The Commission should reject REAP's attempt to broaden and delay here.

B. The Commission Should Protect Non-Party Customer Information From Disclosure Without Their Consent or Waiver.

The sweep of REAP's request encompasses individual citizens, families, and small business owners, as well as larger entities such as those participating in these Dockets. The overwhelming majority of those whose information REAP is attempting to obtain are almost certainly not aware of the request and have not consented to the release of their information.

¹² AG's Response to REAP's Motion for a Scheduling Modification, January 31, 2024.

¹³ REAP's Petition to Intervene at 9.

¹⁴ Order R-10-002(2)/R-11-001(1), Order Opening Docket R-11-1, Scheduling a Technical Conference, and Closing Docket R-10-2, March 14, 2011 at 2.

The Commission has the authority to “do all things necessary or proper” to regulate public utilities in Alaska, including the investigation of a utility’s rates and classifications through a hearing process.¹⁵ Consistent with its statutory authority, the Commission may limit a party’s ability to conduct discovery.¹⁶

The public notices of Chugach’s TA filings advised the public that Chugach had filed TA544-8 and TA422-121 and that the Commission may approve a rate or classification different than filed. The notices *did not* advise the public that individual customer information *not filed by Chugach* could be provided to third-party advocacy groups participating in litigation at the Commission. Importantly, the Commission does not have a regulation that requires the information sought by REAP for purposes of an electric utility cost of service study. Without consent or a regulation on point, in the circumstances of these proceedings compelled production is not necessary or proper.

Conclusion

The personal customer information at issue in REAP’s motion to compel is outside the allowable scope of discovery and its production would unduly broaden the issues and delay these proceedings. Further, the Commission should protect granular information about non-party customers from disclosure without their consent or waiver. The Commission should deny REAP’s motion to compel.

¹⁵ AS 42.05.141(a).

¹⁶ 3 AAC 48.155(a).

DATED this 5th day of February 2024, at Anchorage, Alaska.

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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2024, a true and correct copy of the foregoing document was served by electronic mail on the following attorneys of record:

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